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EAGLE MOLDING COMPANY # 1

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ROY B. SMITH; VICKI SMITH	)	CASE NO. CIV.S-04-1245 LKK GGH
Plaintiffs,	)	<b>STIPULATION AND ORDER TO</b>
vs.	)	<b>MOVE PRE-TRIAL SCHEDULING</b>
EAGLE MOLDING COMPANY #1	)	<b>DATES</b>
Defendants.	)	[FRCP section 35(a)(b)]
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LIBERTY MUTUAL FIRE INSURANCE	)	
COMPANY,	)	
Intervenor.	)	
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COME NOW, plaintiffs ROY AND VICKI SMITH by and through their attorney of record, Anthony J. Poidmore of the LAW OFFICES OF ANTHONY J. POIDMORE; defendant EAGLE MOLDING COMPANY#1, by and through its attorney of record, Charles S. Painter of the law firm ERICKSEN, ARBUTHNOT, KILDUFF, DAY & LINDSTROM, INC.; and intervenor, LIBERTY MUTUAL FIRE INSURANCE COMPANY, by and through its attorney of records, Robert R. Luster, Jr., of the law firm BROWNWOOD, CHAZEAN & CANNON and pursuant to the Federal Rules of Civil Procedure, Rule 16, (b) submit the following stipulation for the court's consideration:

Although the parties have been diligent in their efforts to complete discovery in order to prepare this case for trial, the parties have been unable to complete all necessary discovery so that

1 experts and their reports can be disclosed on May 30, 2006. The parties, however, do not believe  
2 it is necessary to move the current trial date of May 8, 2007.

3 The parties stipulate to an order continuing all dates set forth in the court's Status (Pre-Trial  
4 Scheduling) Conference order dated January 11, 2005, for a minimum of 90 days as follows:

5 The parties request this order based upon the following good cause:

Event	Current Due Date	Proposed Due Date
Disclose Experts & Reports	May 30, 2006	August 30, 2006
Last Day re Motions To Compel Discovery	June 30, 2006	September 30, 2006
Summary Statement of Law & Motion Practice Heard	July 14, 2006	October 16, 2006
Closure of Discovery	July 30, 2006	October 30, 2006
Last Day re Non-discovery Law & Motion	September 30, 2006	November 30, 2006
Last Day to File Respective Pre-Trial Statements	Per Local Rules 40-28 and 16-281	Per Local Rules 40-28 and 16-281
Last Day to File Joint Statement re Disputed and Undisputed Factual Issues	Per Local Rule 16-281(b)(3), (4), and (6)	Per Local Rule 16-281(b)(3), (4), and (6)
Final Pre-Trial Conference	February 5, 2007	February 5, 2007
Trial	May 8, 2007	May 8, 2007

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20 I.  
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22 **THE NATURE OF THE CASE**  
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24 This action arises out of a very serious industrial accident which occurred on September 18,  
25 2002, at defendant's place of business in Yuba City, California.

26 Plaintiff, ROY B SMITH, is a long haul truck driver. At the time of this incident he was 50  
27 years old and employed as a truck driver by Maverick Transportation which is headquartered in Little  
28 Rock, Arkansas. Plaintiffs, ROY B. SMITH AND VICKI SMITH, resided in Arcola, Texas.

1 ROY B. SMITH claims he was seriously injured during the loading of his tractor trailer rig  
2 when a very heavy tarp used to cover the load fell and struck him on the head. Plaintiff contends he  
3 has suffered a very serious closed head injury as well as injuries to his spinal column. As a result  
4 of this incident plaintiff, ROY B. SMITH, claims the following injuries:

5 "Cervical fracture, Thoracic Crush Fracture T6, Lower back pain, Depression, Nerve  
6 damage C6, C7 & C8, and causing weakness of both hands and loss of fine motor  
7 skills."

8 The majority of his medical treatment has been in Texas.

9 He has undergone the following medical procedures:

10 "Cervical spine exploration, bilateral C5-6 and left C6-7 laminectomy and  
11 foraminotomy. Resections of fractured facet bony process of left C6-7 with nerve  
12 root decompression (followed by posterior spinous process fusion). Anterior cervical  
13 discectomy, fusion with plating C5-7, posterior exploration of fusion C5."

14 Plaintiff contends he will need additional medical treatment and surgeries in the future.

15 His medical expenses exceed \$200,000.00.

16 Plaintiff, ROY B. SMITH, has not worked since the accident and he claims his wage loss  
17 claim to date exceeds \$200,000.00. Plaintiff is making a future wage loss claim and alleges it will  
18 exceed \$4 million. Plaintiff, VICKI SMITH, is making a loss of consortium claim.

19 **II.**

20 **PROCEDURAL HISTORY OF CASE AND**  
21 **DISCOVERY ATTEMPTED AND COMPLETED**

22 Attached as Exhibit "A" to this Stipulation is a complete Procedural History of this case as  
23 well as the discovery conducted to date and the discovery that has been attempted and/or is currently  
24 scheduled to take place.

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III.

## **GOOD CAUSE FOR ORDER RESETTING**

## **PRETRIAL DATES AND TRIAL DATES**

The parties have worked diligently together to complete discovery in a timely manner. Due to (a) the nature of Plaintiff's injuries, (b) claimed monetary damages, (c) and the fact that he is not a resident of California, efforts to complete discovery timely have been complicated. Adding to this complication is the fact that Plaintiff's wife is now ill. This has further hampered Plaintiff's availability for deposition. All parties have extended professional courteous and have been flexible throughout the discovery process, but despite their best efforts Plaintiff's deposition has not been completed.

The parties **do not** believe that the May 8, 2007 trial date needs to be moved. Instead, it is the pre-scheduling dates that need to be altered so that the parties can prepare their respective cases in a complete and thorough manner. Once this occurs, all parties will be in a position to determine if settlement is a reasonable possibility. In this regard, all parties are scheduled to disclose experts and their respective reports on or before May 30, 2007. Defendant has retained medical experts in the areas of physical medicine and rehabilitation, neuro-surgery, neurology, neuropsychology, psychiatry and vocational rehabilitation. In order for Defendant's experts to prepare complete and thorough reports, Plaintiff's deposition needs to be completed. Plaintiff is in a different position in this regard, since his experts would seemingly have unfettered access to Plaintiff's version of events, and current complaints via telephone or other means of communication.

Defendant had scheduled plaintiff to travel from Texas to California on October 03, 2005 through October 7, 2005 for his deposition and medical examinations. Plaintiff Roy Smith was scheduled for deposition on October 03, 2005 and his medical examinations were set to go forward as follows:

- a. On 10/4/05 the Plaintiff was scheduled for an Independent Medical Examination with Richard Rubenstein, M.D., neurologist, in the Bay Area.

- b. On 10/5/05 the Plaintiff was scheduled for an Independent Medical Examination with Stuart M. Pickel, M.D., psychiatrist in the Bay Area..
  - c. On 10/5/05 and 10/6/05 the Plaintiff was scheduled for an Independent Medical Examination with William D. Hooker, Ph.D., neuropsychologist in the Bay Area..
  - d. On 10/7/05 the Plaintiff was scheduled for an Independent Medical Examination with Laura Anderson, M.D., neurosurgeon in Sacramento, California.

Shortly before the date set for Mr. Smith's deposition and medical examinations, his wife, Vicki, was hospitalized. This caused the deposition and medical examinations to be taken off calendar.

Plaintiff was ultimately deposed on March 8 and March 9, 2006, but his deposition was not completed. Due to the illness of Plaintiff's wife and his current Texas residency status, the deposition has not resumed.

Defendant will need a minimum of 90 days to (a) coordinate and complete the deposition of plaintiff, Roy Smith, (b) obtain their written reports, and (c) disclose experts pursuant to the Federal Rules of Civil Procedure.

Accordingly, the parties respectfully request this court reset the pretrial and trial date for a minimum of 90 days as set forth above. The parties believe all necessary discovery can be completed without the necessity of moving the May 8, 2007 trial date.

In the alternative, if the court is unwilling to issue an order in accordance with this stipulation, the parties request the court reset the disclosure of experts 45 days in order to allow defendant time to either (a) file a Noticed Motion on this issue, and/or (b) schedule a telephonic conference with the Court and all parties to this action.

**IT IS HEREBY STIPULATED AS FOLLOWS:**

1. Defendant, EAGLE MOLDING COMPANY, wishes to move the following pre-trial scheduling dates for a period of 90 days as set forth above.

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1 DATED: April 28, 2006

2 ERICKSEN, ARBUTHNOT, KILDUFF,  
3 DAY & LINDSTROM, INC.

4 s/ Charles S. Painter

5 By: \_\_\_\_\_  
6 CHARLES S. PAINTER  
7 Attorney for Defendant  
8 EAGLE MOLDING COMPANY# 1

9 DATED: April 28, 2006

10 LAW OFFICES OF ANTHONY J  
11 POIDMORE

12 s/ Anthony J. Poidmore

13 By: \_\_\_\_\_  
14 ANTHONY J. POIDMORE  
15 Attorney for Plaintiffs ROY B.  
16 SMITH and VICKI SMITH

17 DATED: May 1, 2006

18 BROWNWOOD, CHAZEAN & CANNON

19 s/ Robert B. Luster

20 By: \_\_\_\_\_  
21 ROBERT B. LUSTER  
22 Attorney for Intervener LIBERTY  
23 MUTUAL FIRE INSURANCE  
24 COMPANY:

25 **ORDER**

26 The schedule set forth above is ADOPTED by the court.

27 IT IS SO ORDERED.

28 DATED: May 2, 2006.

/s/Lawrence K. Karlton  
LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT